

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THE CITY OF BLAINE, *et al.*,

Plaintiffs,

v.

GOLDER ASSOCIATES, INC., *et al.*,

Defendants.

No. C03-0813L

ORDER GRANTING PLAINTIFFS'  
MOTION IN LIMINE REGARDING  
MITIGATION OF DAMAGES AFTER  
AUGUST 5, 1999

This matter comes before the Court on "Plaintiffs' Motion in Limine Regarding Mitigation of Damages After August 5, 1999." Dkt. # 202. Plaintiffs seek an order excluding from trial all evidence and arguments regarding the City of Blaine's alleged failure to mitigate damages after the construction project was halted on August 5, 1999. Plaintiffs maintain that defendants disavowed any intent to pursue such a defense during discovery. Defendants do not address plaintiff's disavowal argument, instead relying on Fenimore v. Donald M. Drake Constr. Co., 87 Wn.2d 85, 91 (1976), for the proposition that motions in limine can be used only to challenge the admissibility of specific evidence, not arguments.

The Court disagrees on both the facts and the law. Plaintiffs' motion seeks to exclude both evidence tending to show that plaintiffs' failed to mitigate after August 5, 1999, and arguments that would in any way imply that plaintiffs failed to satisfy a duty to mitigate

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1 after construction was stopped. Such motions are common: counsel wants to ensure that an  
2 invalid theory of recovery or defense is not presented to the jury through the admission of  
3 evidence or through the arguments of counsel. Fenimore contains no sweeping statement  
4 regarding the proper focus of a motion in limine. Rather, the case stands for the proposition that  
5 a motion to exclude must identify the objectionable matter “with sufficient specificity to enable  
6 the trial court to determine that it is clearly inadmissible under the issues as drawn or which may  
7 develop during the trial . . . .” 87 Wn.2d 91. Plaintiffs’ motion is detailed enough to allow the  
8 Court to determine that defendants, through counsel, have waived any argument that plaintiffs’  
9 failed to mitigate damages after the construction project was stopped on August 5, 1999.

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11 For all of the foregoing reasons, plaintiffs’ motion in limine regarding mitigation  
12 of damages after August 5, 1999, is GRANTED.

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14 DATED this 20th day of September, 2005.

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17 Robert S. Lasnik  
18 United States District Judge  
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